

IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 279 of 2017

Ganesh Kumar Singh, son of late Ramlagan Singh, resident of village and Post-Mehdasahpur, P.S-Chariyabariyarpur, District-Begusarai, at present residing at worker's Flat Qr. No.642, P.O-Baridih, P.S-Sidhgora, District-East Singhbhum.
..... **Petitioner/Appellant**

Versus

1. Smt. Anita Devi wife of Ganesh Kumar Singh, at present resident of village:Dih, P.O-Birpure, P.S-Birpur District-Begusarai (Bihar).
2. M/s Tata Steel Limited through the C.M.D.

..... **Respondents**

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD**

For the Appellant : Mr. Sanjeev Thakur, Advocate
For the Resp. No.1 : Mr. Saurav Arun, Advocate
Ms. Ayushi, Advocate
Mr. Bhanu Kumar-2, Advocate
Mr. Rohit Ranjan Singh, Advocate

C.A.V on 09.07.2026

Pronounced on 27/08/2026

Per Sujit Narayan Prasad, J.

1. The instant appeal under section 19(1) of the Family Courts Act, 1984 is directed against the judgment dated 20.07.2017 and the decree signed and sealed on 31.07.2017 passed in Matrimonial Suit No.145 of 2008 by the learned Additional Principal Judge, Additional Family Court, East Singhbhum at Jamshedpur, (in short, Family Judge) whereby and whereunder the petition filed under section 13 (1) (i-a), (i-b) of the Hindu Marriage Act, 1955 by the appellant-husband against the respondent-wife, has been dismissed.
2. It needs to mention herein that the instant appeal has been admitted vide order dated 23.07.2018 passed by a co-ordinate Bench of this Court and on that day, the following order was passed:

“04/ 23.07.2018 The sole Respondent has entered appearance on notice.

2. Heard learned counsel for the appellant and the Respondent on the prayer for condonation of delay of 21 days in preferring the Memo of Appeal made through I.A. No. 8878/2017.

3. Learned counsel for the appellant submits that delay is minor and unintentional. In the interest of justice, it may be condoned.

4. On being satisfied with the grounds urged and upon consideration of the submissions of the learned counsel for the parties, delay is condoned. I.A. stands disposed of.

5. Admit.

6. Call for the lower court records in connection with Matrimonial Suit No. 145/2008 from the Court of Learned Additional Principal Judge, Additional Family Court, East Singhbhum, Jamshedpur.”

3. Thereafter, as per roster the matter was listed before different co-ordinate Benches who heard the matter at length. Vide order dated 03.04.2024 a co-ordinate Bench of this Court has passed the following order:

“19/03.04.2024 Since this Court does not have the roster of First Appeal this matter is, therefore, released from our Bench.”

4. The matter was listed before this Court for the first time on 23.04.2025 and on that day the following order was passed by this Court:

“23/Dated: 23rd April, 2025:

“1. Mr. N.K. Sahani, learned counsel on record, has prayed for adjournment.

2. Such submission has been made in presence of Mr. Saurav Varun, learned counsel for the respondent.

3. However, the matter is of the year 2017, still considering the prayer made by the learned counsel appearing for the appellant, the matter is being adjourned.

4. Let this case be listed on Monday, i.e., on 28th April, 2025 so that the matter be finally heard and closed.”

5. On 28.04.2025, this Court has passed the following order:

Order No.41/ Dated 28th April 2025

The present appeal is against the judgment and decree dated 20.07.2017 passed by the learned Additional Principal Judge, Additional Family Court, East Singhbhum at Jamshedpur in Matrimonial Suit No.145 of 2008, whereby and whereunder, the application for divorce under Section 13(i) (ia)(ib) filed on behalf of the appellant has been dismissed.

2. Mr. Sanjeev Thakur along with Mr. Nisith Kumar Sahani, learned counsel for the appellant-husband has submitted that the judgment passed by the learned Family Court suffers from serious error.

3. Mr. Saurav Arun, learned counsel for the respondent-wife has submitted that the appellant is at present working in Tata Steel and he is to superannuate within a year. The wife is ready for settlement in terms of money, if 50% of the retirement benefit will be paid to her which is important for survival of her remaining life.

4. Mr. Sanjeev Thakur, learned counsel for the appellant-husband has submitted that he is having no contact with the appellant. However, he has submitted that he will try to have an instruction on the aforesaid issue and he will address the Court on the issue of maintainability of the present appeal after withdrawal of the aforesaid suit.

5. As prayed for, let this case be listed on 08th May, 2025.

6. The instant appeal was adjourned twice on 08.05.2025 and 24.06.2025 on the request of the parties for filing affidavits and its response.

Thereafter, on 20.04.2026, this Court has passed the following order:

“43/Dated:20th April, 2026

Mr. Sanjeev Thakur, learned counsel appearing for the appellant has submitted that matter may be posted on any date in the next week so that the matter may be heard on merit. He has submitted that matter may come on 28.04.2026.

2. We are agreeing to his proposal. So, matter is being posted on 28.04.2026 within top five cases, so that the instant appeal be concluded on that date.

3. This Court thought it proper to post the mater under the heading ‘For Orders’ keeping the fact into consideration that this appeal, (matrimonial lis), is lying pending before this Court since the year 2017.”

7. Thereafter this Court has thought it proper to implead the employer of the appellant-husband, i.e, M/s Tata Steel Limited through its C.M.D as party-respondent only for corroboration of details which was directed to be filed on behalf of the appellant-husband for consideration of the issue of alimony and has passed the following order:

44/Dated: 28th April, 2026

1. Heard Mr. Sanjeev Thakur, learned counsel for the appellant-husband and Mr. Saurav Arun, learned counsel for the respondent-wife.
2. This Court thought it proper that before proceeding further, an affidavit is required to be filed in view of the judgment rendered in the case of **Rajnish v. Neha & Anr., (2021) 2 SCC 324**.
3. Accordingly, learned counsel for the parties are directed to file affidavit showing the worth both movable and immovable property in view of the aforesaid judgment.
4. The appellant-husband is directed to bring on record the pay-slip along with the statement of account and the details of the property owned.
5. This Court has also been informed by Mr. Thakur, learned counsel for the appellant-husband on the instructions that the appellant is to superannuate from service in February, 2027.
6. This Court is also to consider the issue of alimony in view of the provision of Section 25 of the Hindu Marriage Act, 1955, as such, is of the view that the Tata Steel through its C.M.D. is to be impleaded as party-respondent for the purpose of corroboration of details which is directed to be filed on behalf of the appellant-husband.
7. Accordingly, let the Tata Steel through the C.M.D. be impleaded as party.
8. It has been informed that Mr. Indrajit Sinha, learned counsel is the retained counsel for the Tata Steel, as such, let the name of Mr. Indrajit Sinha be reflected in the daily cause list.
9. Mr. Sinha, learned counsel is directed to file an affidavit furnishing the details of the income of the appellant-husband as also what would be the retiral benefits after his superannuation from service. The said affidavit be supported by relevant documents.
10. Let this case be listed on 11.05.2026 under the same heading.”

8. On 09.06.2026 when the matter was listed on Board, both the parties who were present in the Court, had agreed for one time settlement and the matter was adjourned to be listed on 12.06.2026 for filing their respective affidavits in this regard.

9. On 12.06.2026 the respondent-wife has stated she has not agreed for one time settlement and a prayer has been made on her behalf to decide the matter on merits. On 12.06.2026 this Court has passed the following order:

48 / 12.06.2026 *Reference may be made to the order dated 09.06.2026 which is being referred herein:*

“1. Mr. Sanjeev Thakur, learned counsel appearing for the appellant, on instruction from his client i.e the appellant, namely, Ganesh Kumar Singh, who is present before this Court, has submitted that his client (i.e. the appellant) is ready for one time settlement for an amount of Rs. 25.00/- Lakhs.

2. The aforesaid offer has been accepted by Mr. Saurav Arun, learned counsel appearing for the Respondent, namely, Smt. Anita Devi, who is also present before this Court.

3. Learned counsel for the appellant, however, has sought for adjournment for two days to bring this fact on record by filing an affidavit.

4. Let the affidavit be filed by serving a copy in advance to the learned counsel appearing for the respondent so that he may also file a separate affidavit showing the consent over the same.

5. Let this case be listed on 12th June, 2026.”

2. The affidavit in pursuance to the order dated 09.06.2026 has been filed on behalf of the appellant-husband showing the consent for settlement on payment of Rs.25,00,000/- as a lump sum amount of settlement.

3. The similar affidavit was also to be filed on behalf of the respondent.

4. When the matter has been taken up today, Mr. Saurav Arun, learned counsel appearing for the respondent-wife has submitted that although he has made statement on the basis of the instruction which has been received from his client, the

respondent showing the agreement of settlement on payment of Rs.25,00,000/-, to which the appellant has agreed as taken note in the order dated 09.06.2026. But today Mr. Saurav Arun, learned counsel has submitted that his client is not ready for settlement rather his client, respondent is willing to decide this case on merit. Therefore, no such separate affidavit has been filed in terms of the order dated 09.06.2026.

5. This Court, therefore, is of the view that the Court cannot compel a party to come to the settlement. However, initially it was agreed by the respondent but subsequently, disagreement has been shown to this Court, therefore, is of the view that the matter is to be heard on merit.

6. Mr. Sanjeev Thakur, learned counsel appearing for the appellant has submitted that he has already concluded his part of argument subject to the response of the argument which is to be advanced on behalf of the respondent.

7. Accordingly, the matter is being deferred to be listed on 09.07.2026 so that the argument be advanced on behalf of the respondent for deciding the issue on merit.

8. List this case on 09.07.2026.”

10. On 09.07.2026, this Court after having heard both the parties at length has reserved the judgment.

Factual Matrix

11. The brief facts of the case as pleaded in the plaint having been recorded by the learned Family Judge, needs to be referred herein as:

- (i) The appellant-husband and respondent-wife got married with each other on 18.02.1999 at Village-Dih, PS-Birpur, Begusarai as per Hindu rites and rituals.
- (ii) Prior to the marriage of the petitioner with the respondent Anita Devi, the petitioner was earlier married with Anju Devi from whom the petitioner has a son and a daughter who are aged about 16 years and 13 years respectively at the time of presentation of divorce suit.

- (iii) The first wife of the petitioner namely Anju Devi died in 1994. After death of the first wife, the marriage negotiation of the petitioner with the respondent had taken place and it continued for months together and thereafter the marriage was fixed with the respondent and it was understood to the respondent family and the respondent that after the marriage with the petitioner, the respondent would ever look after the two children of the petitioner born out of the wedlock of his first wife Anju Devi and on this proposal, the marriage of the petitioner with the respondent was solemnized on 18.02.1999.
- (iv) At the time of marriage, the petitioner was working in TISCO Ltd. as a permanent employee and therefore, after the marriage the petitioner came to Jamshedpur along with respondent and along his two minor children born out of the wedlock with his first wife and they all started residing in Flat no. 642, Workers' Flat, Baridih, Jamshedpur which was allotted to the petitioner by his employer TISCO Ltd.
- (v) During the course of residing at aforesaid flat, the respondent mercilessly tortured her step-children causing immense mental agony to the petitioner and when torture to the two children went beyond limit, the petitioner was compelled to send the children to their maternal house at Pokhariya, Begusarai.
- (vi) After the children went to their maternal home, the parents and the brother of the respondent wife came to the

aforesaid flat of the petitioner and started residing there causing utmost annoyance to the petitioner.

- (vii) While residing in the said flat, the parents and the brother of the respondent started extorting money from the petitioner and for that sake they used to even write letters making demand of money. The petitioner has alleged that the respondent was pressing upon the petitioner to transfer the land which the petitioner has purchased at Begusarai in his own name and in the name of his son, born from his first wife and when the petitioner refused to do so, the respondent started creating nuisance.
- (viii) The respondent even handed her golden ornaments, given by the petitioner to her father, who, in turn, mortgaged the same for monetary gain.
- (ix) That the torture upon the petitioner was so unbearable that the petitioner was compelled to leave his flat as to reside elsewhere in order to have mental peace and thereafter the respondent and her parents and brother started joyfully occupying the said flat for which the petitioner has been paying monthly rent, electricity charges etc.
- (x) That in order to extort money and to harass and torture the petitioner, the respondent instituted a false case of dowry demand against the petitioner, his parents and his brother and married sister.
- (xi) Finding no way out, the petitioner had filed a Matrimonial Suit no. 49/2001 against the respondent for decree of divorce but as he could not collect sufficient documentary

evidence at that time, hence, he had to withdraw the suit which was accordingly ordered to be withdrawn by the Ld. Principal Judge, Jamshedpur vide order dated 14.12.2001.

- (xii) After some time, the petitioner has filed a fresh suit for divorce on the ground of cruelty and desertion, which is the subject matter of the instant appeal.
- (xiii) It is stated that after withdrawal of the first suit for divorce, the respondent had filed a case u/s 107 Cr.P.C. in the court of Ld. SDM, Jamshedpur vide Misc. Case no. 374/02 and another case by filing an application before the Ld. SDM but these cases were dropped and one of the cases was found to be false by the Ld. SDM, Jamshedpur.
- (xiv) It is further stated that the respondent even filed a false criminal case at Begusarai against the petitioner and his family members but the said case terminated in favour of the petitioner by judgment dated 01.03.2005 passed by the Ld. Judicial magistrate, 1st Class, Begusarai in GR-1214/2003. The respondent-wife even filed a false Maintenance case vide Misc. case no. 37/2002.
- (xv) Apart from this, the father of the petitioner, namely, Ram Lagan Singh has also filed a complaint case vide C/1-1430/2002 on 21.10.2002 before the Ld. CJM, Begusarai, which is pending.
- (xvi) The petitioner apprehending the danger to his live also instituted a case u/s 107 Cr.P.C. vide Misc. case no. 1420/2002.

(xvii) That on 02.06.2002 in the court campus the respondent as well as other family members assaulted the petitioner and the father of the petitioner for which criminal case vide C/1-564/2003 was instituted against the respondent and others.

(xviii) Prior to this case, another case was instituted against the respondent and others for allegedly assaulting the petitioner and for snatching his golden ornaments vide C/1-897/2002. Another case vide C/1-1074/2007 was instituted against the respondent and others for act of vandalism over the case which is still pending.

(xix) It is further stated that apart from the aforesaid criminal cases the respondent has committed serious offence and she has been sent to jail in the criminal case vide Sidgora P. S. case no. 93/2007, which was instituted against the respondent, her father, her brother and her mother for allegedly committing murder of her sister-in-law and for which the respondent is facing sessions trial in the court of Ld. Addl. Sessions Judge, Jamshedpur, vide ST case no. 23/2008.

(xx) In view of these cases, it is clear that the respondent is a woman of criminal character and she has treated the petitioner with cruelty, both mental and physical and it would be harmful for the petitioner to continue his conjugal life with the respondent.

12. On the aforesaid ground of cruelty and desertion, the petitioner-husband has filed a suit before the learned Family Court and prayed for a

decree of dissolution of the marriage between him and the respondent-wife.

13. In pursuance to issuance of notice, the appellant-wife appeared in the original suit and filed written statement denying all the allegations of torture and cruelty committed by her upon the petitioner and upon the children of the petitioner born from his first wife. The respondent has stated that it is the respondent-wife who has suffered cruelty in her matrimonial home from the hands of the petitioner-husband and further it is the respondent-wife who has been deserted by the petitioner but the petitioner has filed this case by suppressing these facts and the petitioner intends to take advantage of his own wrong.

14. The respondent-wife has alleged that the marriage of the respondent with the petitioner was solemnized on 18.02.1999 and at the time of marriage, the family of the respondent was told that the petitioner is unmarried. The respondent has further stated that after the marriage, the respondent-wife was firstly brought to the house of the petitioner situated at Begusarai, near Alka Cinema Hall and she was not taken to the native village of the petitioner, neither the children of the petitioner from the first wife were brought in the house where the respondent-wife was taken first. After sometime, the petitioner and the respondent came to Jamshedpur and they started living as husband and wife in a rented house in Namda Basti, Jamshedpur, and after living there for about 3 months, the petitioner and the respondent shifted to the quarter allotted to the petitioner situated at Workers' Colony.

15. The respondent-wife has further alleged that after shifting to the said quarter, the petitioner started demanding Rs. 1 lakh from the respondent and the respondent was tortured for fulfilling the same and she

was even physically assaulted, locked in a room and even she was not provided proper food. The respondent has further stated that when the demand of the petitioner was not fulfilled the respondent was assaulted inhumanly and when the neighbours told the respondent to inform the police, the petitioner fled away leaving the respondent and her son and, since then, the petitioner is not living with the respondent and her son and neither he was providing anything for their maintenance and because of that the respondent has been compelled to file maintenance case claiming maintenance for herself and her son.

16. It is pleaded that the petitioner, in order to save himself from the criminal case and the maintenance case, filed Matrimonial Suit No-49/2001 for divorce and when the respondent appeared in the said divorce case and filed her written statement, the petitioner filed an application for withdrawal of the said case which was ultimately dismissed.

17. The respondent-wife has further stated that the petitioner-husband never missed any opportunity to torture the respondent and when the *Bhabhi* of the respondent committed suicide, the petitioner in connivance with the mother and father of the deceased Bhabhi of the respondent, implicated the respondent in false case of dowry death, in which the respondent has been convicted by the learned Trial Court and the respondent has preferred appeal before the Hon'ble Jharkhand High Court, Ranchi, in which respondent/wife has been acquitted .

18. It is pleaded that the petitioner and his family members have filed several cases against the respondent in Jamshedpur as well as in Begusarai, but in most of those cases, the respondent has been acquitted.

19. It is further averred that when the respondent was in judicial custody in connection with the false case of death of her Bhabhi, the son

of the respondent was forcibly taken by the petitioner, though for about 8 years since his birth, he has remained with the respondent. The respondent has further stated that when the respondent was in judicial custody in connection with said case, the petitioner has filed this divorce suit with dishonest intention so that the respondent might not be able to appear and contest this case.

20. It is averred that the petitioner by living separately has indulged in adulterous relation with some other woman and he has sexually exploited other woman on the pretext of marrying her and for that even a complaint has been filed against the petitioner.

21. It is further pleaded that earlier divorce suit vide Matrimonial Suit no. 49/2001 filed by the petitioner was dismissed as withdrawn without giving leave to the petitioner to file a fresh suit and, as such, the present suit is not maintainable. The respondent-wife has further stated that it is the respondent-wife, who has suffered cruelty in her matrimonial home and not the petitioner-husband, and hence, this suit is liable to be dismissed.

22. Learned Family Judge, after institution of the said case, taking into consideration of the pleadings of the petitioner/appellant and the respondent-wife has formulated the issues and has decided the *lis* by refusing to grant divorce to the petitioner/appellant.

23. The aforesaid judgment, by which divorce has not been granted, is under challenge by filing the instant appeal.

Submission of behalf of the appellant-husband:

24. Mr. Sanjeev Thakur, the learned counsel appearing for the appellant-husband has taken the following grounds:

- (i) There is an error in the impugned judgment, since, each and every aspect of the matter has not been taken into consideration based upon the documentary evidences as well as ocular evidences.
- (ii) It has been contended that the element of cruelty has been found to be there as the respondent-wife has filed several criminal cases against the appellant-husband and his family members, but without appreciating the same properly, the learned Family Judge has come to the finding by holding that no element of cruelty is there and, as such, the impugned judgment and decree suffers from an error.
- (iii) It has been contended that the appellant has been meted out with cruelty at the hands of the respondent-wife and her family members due to cruel behaviour and assault as would be evident from the evidence adduced on behalf of the appellant-husband, but the same has not been taken into consideration by the learned Family Judge.
- (iv) It has been contended that though the learned Family Judge has proceeded the matter and dismissed the original suit, but he has failed to appreciate the evidences adduced on behalf of the appellant as in the trial, the evidence has come that it was the respondent-wife who has committed cruelty upon him by her cruel behaviour and act, deserted the petitioner and

compelled him to leave the staff quarter by assaulting him.

25. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment and decree, therefore, need interference on the ground of perversity.

Submission of behalf of the respondent-wife:

26. Per contra, Mr. Saurav Arun, the learned counsel appearing for the respondent-wife has taken the following grounds:

- (i) There is no error in the impugned judgement as the learned Family Judge has considered the entire issue and on the basis of evidence laid by the respondent herself has passed the order impugned.
- (ii) The respondent-husband has sought for divorce on the ground that the behaviour of the appellant-wife is cruel and she has deserted him without any valid ground and the learned Family Court, after taking into consideration the evidence adduced on behalf of the respondent-wife, has rightly held that there was no sufficient ground found with regard to cruelty and desertion by the respondent-wife and, as such, has dismissed the divorce petition.
- (iii) It has been contended that the issue of desertion has rightly been appreciated, since, the issue of desertion requires to be considered on the basis of the factum that if any of the spouse has left the matrimonial house on his/her own will, but in the instant case the petitioner-husband in his evidence during trial as he

himself admitted that he left the staff quarter and started living in a rented quarter at Vidyapati Nagar separately and on that basis the learned Family Judge has rightly dismissed the suit for divorce.

27. Learned counsel, based upon the aforesaid grounds, has submitted that if on that pretext, the factum of cruelty and desertion has not been found to be established, hence, the impugned judgment cannot be said to suffer from an error.

Analysis:

28. We have heard the learned counsel appearing for the parties, gone through the impugned judgment, as also the testimony of the witnesses and the materials available on record.

29. It needs to refer herein that since appellate jurisdiction has been invoked herein, therefore, before entering into merit of the case, at this juncture it would be purposeful to discuss the appellate jurisdiction of the High Court.

30. It needs to refer herein that under section 7 of the Family Courts Act, the Family Court shall have and exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature which are described in the explanation to section 7(1).

31. Sub-section (1) to section 19 of the Family Courts Act provides that an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court "both on facts and on law". Therefore, section 19 of the Family Courts Act is parallel to section 96 of the Code of Civil Procedure, the scope of which has been dealt with by the Hon'ble Apex Court in series of judgments.

32. The law is well settled that the High Court in a First Appeal can examine every question of law and fact which arises in the facts of the case and has powers to affirm, reverse or modify the judgment under question. In "*Jagdish Singh v. Madhuri Devi*" (2008) 10 SCC 497 the Hon'ble Supreme Court observed that it is lawful for the High Court acting as the First Appellate Court to enter into not only questions of law but questions of fact as well and the appellate Court therefore can reappraise, reappraise and review the entire evidence and can come to its own conclusion. For ready reference, the relevant paragraph of the said judgment is being quoted as under:

"It is no doubt true that the High Court was exercising power as the first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a rehearing of the main matter and the appellate court can reappraise, reappraise and review the entire evidence--oral as well as documentary--and can come to its own conclusion."

33. This Court is now adverting to the impugned order/judgment by which prayer for dissolution of marriage on the ground of cruelty and desertion has been refused by the learned Family Court.

34. It is evident that the learned Family Judge has considered the evidence adduced on behalf of the appellant-husband and the respondent-wife for deciding the issues involved in Matrimonial Suit No.145 of 2008 which has been filed on the ground of cruelty and desertion by the appellant-husband.

35. The learned Family Judge has formulated altogether six issues, for ready reference the same are being quoted hereinbelow:

I. Whether the suit is maintainable in its present form?

II. Whether the petitioner has got valid cause of action for the suit?

III. Whether the petitioner is entitled to a decree for dissolution of the marriage on the ground of cruelty and desertion?

IV. Whether the petitioner has suffered cruelty from the hands of the respondent?

V. Whether the suit is barred U/O XXIII, Rule-1(4) of CPC?

VI. Whether the petitioner is entitled for any other relief or reliefs claim in the suit?

36. In support of his case, three witnesses have been examined on behalf of the petitioner-husband (appellant herein) including himself as P.W.1. In addition to that the following documentary evidences have been adduced on behalf of the petitioner-husband:

(i) Certified copy of marriage card which has been proved in GR Case No. 1346/01,

(ii) Certified copy of deposition of Rajendra Kumar examined in Misc. Case No. 1420/02,

(iii) Certified copy of deposition of Chandra Bhushan Prasad Singh examined in Misc. Case No. 37/02,

(iv) Certified copy of deposition of police report submitted in Misc. No. 149/02,

(v) Certified copy of Surrender-cum-bail petition of Jagarnath Prasad Singh filed in C/I Case No. 564/03,

(vi) Certified copy of letter dated 30.10.1999 of Jagarnath Prasad Singh proved in GR Case no. 1346/01,

(vii) certified copy of judgment dated 01.03.2005 passed in GR Case no. 1214/03,

(viii) certified copy of deposition of Anita Devi in GR Case NO. 1346/01,

(ix) certified copy of order sheet of GR Case NO. 1257/03,

(x) certified copy of deposition of Dr. Ashok Kumar Barnwal & Virendra Paswan examined in GR Case no. 1257/03,

(xi) certified copy of deposition of Nawal Kishor Prasad Singh examined in GR Case no. 1346/01,

(xii) certified copy of order-sheet dated 28.10.2009 of GR Case NO. 2692/08,

(xiii) certified copy of charge-sheet of GR Case No. 2692/08,

(xiv) certified copy of letter dated 07.10.2001 of Baidhnath Prasad Singh exhibited in Misc. Case 37/02,

- (xv) *certified copy of order dated 09.11.2015 of GR Case No. 3686/15,*
- (xvi) *certified copy of FIR of Sitaramdera PS Case No. 247/15,*
- and*
- (xvii) *certified copy of judgment dated 22.05.2009 passed in Sessions Trial No. 23/08.*

37. On the other hand, the appellant-wife has also examined four witnesses in support of her contention including herself as DW1 and she has also adduced the following documentary evidence:

- (i) *Photocopy of judgment of C/1 case no. 1374/2006,*
- (ii) *photocopy of Judgment of C/1 case no. 564/2003,*
- (iii) *photocopy of Sidgora PS case no. 94/2001,*
- (iv) *photocopy of order sheet of Mat. Suit no. 49/2001,*
- (v) *photocopy of order dated 03.02.2009 of Misc. case no. 37/2002,*
- (vi) *photocopy of Letter dated 15.10.2008 addressed to the Superintendent of Police, Jamshedpur,*
- (vii) *photocopy of deposition of Dr. Akhilesh Kumar Choudhary given in ST case no. 23/2008,*
- (viii) *photocopy of order dated 20.06.2012 of C/1 case no. 2063/2011,*
- (ix) *photocopy of complaint petition of C/1 case no. 2063/2011,*
- (x) *photocopy of FIR of Sidgora PS case no. 93/2007,*
- (xi) *photocopy of order dated 24.02.2010 of Misc. case no. 37/2002,*
- (xii) *photocopy of deposition of Satya Narayan Singh given in ST case no. 23/2008, and*
- (xiii) *photocopy of letter dated 23.01.2010 of the District Transport Officer, Jamshedpur*

38. But first of all, the learned Family Judge has taken into consideration the issue nos. (III) and (IV) i.e., whether the petitioner is entitled to a decree for dissolution of the marriage on the ground of cruelty and desertion and whether the petitioner has suffered cruelty from the hands of the respondent?

39. Thereafter, the learned Family Judge has considered the evidence adduced on behalf of the parties for deciding the issues involved in Matrimonial Suit No.145 of 2008.

40. This Court while appreciating the argument advanced on behalf of the appellant on the issue of perversity needs to refer herein the interpretation of the word “perverse” as has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence.

41. The Hon'ble Apex Court in *Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206* while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

“24. The expression “perverse” has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression “perverse” means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that “perverse finding” means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In *M.S. Narayanagouda v. Girijamma* [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough* [(1878) 1 LR 1r 331] the Court observed that a “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

In *Godfrey v. Godfrey* [106 NW 814] the Court defined “perverse” as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression “perverse” has been defined by various dictionaries in the following manner:

1. *Oxford Advanced Learner's Dictionary of Current English*, 6th Edn.

“Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.”

2. *Longman Dictionary of Contemporary English*, International Edn.

Perverse.—Deliberately departing from what is normal and reasonable.

3. *The New Oxford Dictionary of English*, 1998 Edn.

Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. *The New Lexicon Webster's Dictionary of the English Language* (Deluxe Encyclopedic Edn.)

Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. *Stroud's Judicial Dictionary of Words & Phrases*, 4th Edn.

“Perverse.—A perverse **verdict** may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.”

42. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further, “perverse verdict” may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

43. Thus, “perversity” refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a Court.

44. Further, Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon’ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

45. In the backdrop of the aforesaid settled position of law and factual aspects only seminal issue has to be decided herein that “*Whether the plaintiff is entitled to get divorce dissolving the marriage of the petitioner/appellant with OP/wife under sections 13(1) (i-a) and (i-b) of the Hindu Marriage Act, 1955?*”

46. This Court, in order to appreciate the aforesaid rival submission before entering into the legality and propriety of the impugned judgment, needs to discuss herein the relevant part of the evidences adduced on behalf of the appellant-husband and the respondent-wife wherein the element of cruelty and desertion has been shown by the petitioner-husband (appellant herein).

47. During the trial, the appellant-husband himself has been examined as PW1 before learned Family Court.

48. In his examination-in-chief on oath as PW1, the respondent-husband has narrated entire things as pleaded in the plaint about his marriage with the appellant-wife. PW-1 has stated that his marriage with

the respondent-Anita Devi was solemnized on 18.02.1999 but prior to this marriage, PW-1 was earlier married with one Anju Devi, in the year 1990 but the said Anju Devi died in 1994 leaving behind her two children Sanjeev Kumar and Surbhi Kumari. After death of his first wife, the two children of PW-1 from his first wife, were residing in their maternal home with their maternal Grand-father, Chandra Bhushan Prasad Singh, though the entire expenses of their maintenance were incurred by PW-1.

49. PW-1 has further stated that the fact about the first marriage and his two children from the first marriage were known to the respondent, her father and her brother and they had agreed for marriage after knowing this fact and, hence, the marriage of PW-1 with the respondent was solemnized on 18.02.1999. PW-1 has further stated that after the marriage, PW-1 and the respondent started residing as husband and wife at workers Flat No. 642, Baridih, which was allotted to PW-1 by his employer TISCO as PW-1 was a permanent employee of TISCO and a male child was born out of their wedlock on 05.12.1999 at TMH, Jamshedpur.

50. PW-1 has further stated that after that the mother, father and the brother of the respondent started demanding money from the petitioner by writing letter and by personally visiting to Jamshedpur. PW-1 has stated that one Ramakant Singh, who was friend of the father of the respondent and who worked in electricity department of Jamshedpur, used to give the letters of the parents and the brother of the respondent to PW-1 and thereby the parents and the brother of the respondent have taken about Rs. 50,000/- from PW-1.

51. PW-1 has further stated that the respondent and her parents demanded Rs 1 lakh from PW-1 for starting STD both for the brother of the respondent, Manoranjan Singh and when PW-1 refused to pay the

same, they started quarreling with PW-1 and they even assaulted PW-1 and PW-1 was not provided proper food. PW-1 has further stated that these instances continued for some time and finally PW-1 was driven out of quarter no. 642 by these persons after being assaulted and threatened to bring Rs. 1 lakh.

52. PW-1 has further stated that thereafter PW-1 filed Matrimonial Suit No. 49/01 against respondent for divorce in which the respondent appeared after notice but did not file her written statement in the said case, rather the respondent-wife filed a case u/s 498A IPC vide GR Case no. 1346/2001 against the petitioner, his parents and his brothers and sisters. PW-1 has further stated that the respondent got the petitioner agreed for withdrawal of the said divorce case but she did not withdraw her criminal case, rather she filed a maintenance case against the petitioner. PW-1 has stated that after being driven out of the said quarter, PW-1 is residing in Vidhyapati Nagar, in a rented house of one Rajendra Choudhary. PW-1 has stated that his wife, the respondent, went to jail and his son was left alone, after that PW-1 again started residing in quarter no. 642 but he continued to hold the rented quarter. PW-1 has stated that since he could not attend his duty by leaving his child alone in the house, he shifted his son in a hostel in Begusarai.

53. PW-1 has further stated that the respondent and her father, mother and brother came to the rented house of PW-1 and on several occasions, they assaulted PW-1 for that Misc. case No. 1420/02, u/s 107 Cr.P.C and one complaint case No. bearing 857/02 were instituted. Further, another criminal case vide C/1 case No. 564/03 was instituted against the respondent and her parental family for snatching some

documents and files from PW-1 and also for assaulting PW-1 and his father.

54. PW-1 has further stated that during evidences of Misc. Case No. 37/02, on the day of examination of Nawal Kishor Prasad Singh, PW-1 and his father Ram Lagan Singh were assaulted with club and for that GR Case No. 1257/03 was instituted and as the father of PW-1 was suffering from Bronchitis and he suffered injury on his chest and mouth, his condition aggravated and after long illness, ultimately the father of PW-1 expired. PW-1 has stated that the respondent filed an application before the Ld. SDJM, Jamshedpur on 2.7.2003 alleging obscene behavior and kidnapping against PW-1 and others, but the said case was found false after police investigation. The respondent instituted another case vide GR Case No. 1214/03 at Begusarai but in that case, PW1 and others were acquitted. PW-1 has further stated that the respondent, the father of respondent, the mother of respondent and the brother of respondent forcibly entered into the house of PW-1 situated at Begusarai and they committed dacoity in the house of PW-1 for which C/1 case No. 1420/2002 was instituted. PW-1 has filed another case against respondent for giving false evidence in the Court vide C/1 case No. 1274/06. PW-1 has stated that the respondent, her mother and her brother has got their ration card and voter card issued on the address of the quarter of PW-1 without consent of PW-1. PW-1 has stated that the respondent married her brother Manoranjan Singh with Sonam Dutta, daughter of Rakesh Dutta from the said quarter in February, 2007 and subsequently they all murdered the said Sonam Dutta on 30.06.2007 for which Sidhgora PS Case No. 93/2007 was registered and now they are facing trial in Sessions Trial No. 23/08 and the father and the brother and the respondent herself were in jail custody in the

said case. PW-1 has further stated that the respondent has also taken the ornaments mortgaged by the father of PW-1 and the respondent is bound to return the same to PW-1 under Section 27 of the Hindu Marriage Act. PW-1 has stated that he has fear of life from the respondent and as such he has filed this case.

55. During cross examination at para-38, PW-1 has stated that he had earlier filed Matrimonial Suit No. 49/01 and, in that suit, the respondent had appeared but she filed written statement after filing a false case against PW-1. PW-1 has further stated that he has filed altogether five cases against the respondent. Further in Para-43, PW-1 has stated that he has got one Suraj Kumar admitted in TMH by allowing deduction from his own salary and PW-1 knew that the said Suraj Kumar has filed Misc. Case 66/03 against the respondent. Further in Para-48 of his cross-examination, PW-1 has stated that he is residing in Baridih quarter from April 2008 but subsequently, PW-1 has stated that he is not residing in the said quarter from March 2001. PW-1 has further been cross-examined on recall on 21.06.2017. In Para-1 of his further cross-examination, PW-1 has stated that PW-1 or his father had not given any written information to the respondent that PW-1 was marrying with the respondent for looking after his children from his first wife nor the respondent has given any such written undertaking. In para-6 of his further cross-examination, PW-1 has stated that both children of his first wife have done their schooling from DAV School, Begusarai and they have passed matriculation examination from the said school and the son has done his college education from Delhi whereas the daughter has done her college education from Begusarai and subsequently, both the children have done their engineering from Bangalore. PW-1 has further stated that after marriage of PW-1 and the

respondent, they firstly went to their house situated at Begusarai as the marriage was solemnized from the said house. Thereafter, the respondent was taken to the native village and subsequently, both of them came to Jamshedpur and started residing at Jamshedpur in a rented house at Namda Basti.

56. In Para-11 of his further cross-examination, PW-1 has stated that he does not remember whether he had earlier filed any case under Section 9 of the Hindu Marriage Act but he had sent a legal notice to the respondent but he did not remember the date. In Para-22, PW-1 has stated that the respondent wife has filed a case under Section 498A of IPC against him in 2001 at Jamshedpur and again in 2003 at Begusarai. In Para-31, PW-1 has stated that he has informed his company that his quarter is being used by the respondent for wrongful activities and PW-1 would try to file the said letter in the record.

57. PW-2 has stated that he knows petitioner Ganesh Kumar Singh and his family very well. PW-2 has further stated that prior to his marriage with the respondent the petitioner was earlier married with one Anju Devi, in the year 1990 but the said Anju Devi died accidentally in 1994 leaving behind her two children, one son and one daughter. After death of his first wife, the two children of the petitioner from his first wife, were residing in their maternal home with their maternal Grandfather, Chandra Bhushan Prasad Singh, though the entire expenses of their maintenance were incurred by the petitioner. PW-2 has further stated that the fact about the first marriage of the petitioner and his two children from the first marriage were disclosed to the respondent, her father and her brother with the consent of the respondent that she would look after the children as their

mother, the marriage of the petitioner with the respondent was solemnized on 18.02.1999.

58. PW-2 has stated that after the marriage in the year 1999, the petitioner and the respondent started residing as husband and wife at workers flat No. 642, Baridih, a male child was born out of their wedlock on 05.12.1999. PW-2 has further stated that with the consent of the respondent, the parents of the respondent always demanded money from the petitioner and they had taken about Rs.50,000/-from PW-1 and they were further demanded Rs. 1 lakh from the petitioner for opening STD Booth for their son Maniranjana Kumar Singh and when the petitioner refused to pay the said money, the respondent, her parents and brothers assaulted the petitioner and driven out him from quarter No. 642, Baridih and they also took away ornaments belonging to the first wife of the petitioner worth Rs. 1,50,000/. PW-2 has further stated that since March 2001, PW-1 is living in a rented house at Vidhyapati Nagar. PW-2 has further stated that earlier the petitioner has filed Matrimonial Suit No. 49/01 against the respondent in which respondent appeared but prior to filling her written statement in the said case the respondent wife filed a dowry case against the petitioner and his family members. PW-2 has further stated that after filing her written statement in Matrimonial Suit No. 49/01, the respondent got the petitioner agreed for withdrawal of the said case but she did not withdraw her criminal case, rather she filed a maintenance case against the petitioner. PW. 2 has further stated that the respondent, her parents and brother had assaulted the petitioner on many occasions in his rented house, in the court premises, as well as on roads and for that the petitioner has filed several cases against them and there is a case in Begusarai as well. PW-2 has stated that father of the petitioner,

namely, Ram Lagan Singh had die. It is further stated in the examination in chief of PW-2 that the respondent-wife got her brother Manoranjan Kumar Singh married from the said quarter without consent of the petitioner and subsequently, PW-2 heard that the respondent with her parents and her brother had murdered the sister-in-law of the respondent and in that case, the respondent and her father are on bail. PW-2 has further stated that the respondent used to assault the children of the petitioner born from his first wife and she did not provide them proper food and, hence, after some time, the petitioner sent the children to their maternal grandfather's home. PW-2 has further stated that after the respondent went to jail, the petitioner went in the said quarter to look after his younger son but again the petitioner came to the rented house and he has kept his younger son Satyam Kumar in the hostel at Begusarai. PW-2 has stated that the petitioner has fear of life from the respondent and as such he has filed this case.

In his cross-examination, PW-2 has stated that he knows the petitioner for last 25 to 30 years. In para-33, this witness has stated that he knew that the petitioner was residing in Baridih Quarter till October 2008. Further in Para-37, PW-2 has stated that the petitioner are four brothers. PW-2 has further stated that it is true that petitioner has filed Guardian Ship case No. 02/2009 for custody of his son-Satyam. This witness has further stated that two brothers of petitioners reside at Begusarai.

59. PW-3, Bande Shankar Singh, in his examination-in- chief filed on affidavit has reiterated the facts stated by the petitioner, PW-1 and in gist, this witness has stated that the respondent was demanding Rs. 1 lakh from the petitioner for opening STD Booth for his brother and when the

petitioner did not pay the said amount, the petitioner was assaulted by the respondent, her parents and her brother. In May 2001, the petitioner was driven out from his quarter situated at Baridih. This witness has also stated about the different cases filed between the parties.

In his cross-examination, PW-3 has stated that he knows the petitioner Ganesh Singh since the year 1983. This witness has further stated that earlier two children of the petitioner born from his first wife were residing and studying at Jamshedpur but this witness does not know the name of the school. PW-3 has further stated in his cross-examination that the petitioner is working in Tata Steel Company since 1983.

60. On behalf of the respondent, the respondent herself, her father and two other witnesses have been examined.

61. In her deposition, the respondent, DW-1, has denied all the allegation of torture and desertion leveled by the petitioner and in her examination -in-chief, DW-1 has stated that it is the respondent wife, who has suffered cruelty in her matrimonial home and the petitioner by suppressing all these facts have firstly filed Matrimonial Suit No. 49/01, which was dismissed as withdrawn without leave to file fresh suit and subsequently, after 7 years, this suit was filed by the petitioner on the same ground.

62. In her cross-examination, DW-1 has stated that she does not remember the exact date, month and year, when her husband left her and her son in the said quarter and went away. In para-34, DW1 has stated that she had never given any legal notice to her husband for leaving her and her son. DW-1 has further denied the fact that the voter card of her father and her brother contains the address of workers quarter no. 642. Further in para-40 of her cross-examination, DW-1 has stated that marriage of her

brother Manoranjan Kumar was solemnized from the said quarter in the year 2007 and she has not taken any permission for the same from her husband as she was not aware of whereabouts of her husband. In para-44, DW1 has stated that it is true that on 31.10.1999, her father had demanded Rs. 30,000/- from her husband by writing a letter but DW-1 has stated that this demand was made for making payment of consideration amount of wood purchased for the construction of the house of her husband at Begusarai. Bulk of the cross-examination of DW-1 has been done related with the cases filed between the parties.

63. DW-2 is Jagarnath Prasad, the father of the respondent and father-in-law of the petitioner. In his examination-in-chief filed on affidavit, DW- has stated that his daughter is residing in the same quarter where she was residing along with her husband and from where the petitioner has left her and her infant son. DW-2 has further stated that the petitioner has filed this case suppressing the real facts and earlier also, the petitioner has filed Matrimonial Suit No.49 of 2001 in which the respondent appeared and filed her written statement on 07.07.2001 and thereafter the petitioner filed withdrawal petition on 11.12.2001, seeking withdrawal of the said suit with leave to file fresh suit. But the learned court, although allowed the withdrawal of the case but did not give leave for filing fresh suit and the petitioner has filed this fresh suit for divorce by concealing this fact.

64. DW-2 has further stated that the respondent was married with the petitioner on 18.02.1999 and after the marriage, the respondent was severely tortured by the petitioner, physically as well as mentally, and the respondent was not even provided proper food and subsequently the petitioner left the respondent in the said quarter and went away. DW-2 has

denied all the allegation of torture and cruelty leveled against the respondent.

In his cross-examination, DW-2 has stated that it is true that he has written letters to his son-in-law, the petitioner, and to his daughter, the respondent; separately demanding money but DW-2 has stated that he has demanded the money as he had purchased the wood for construction of the house of the petitioner at Begusarai.

65. DW-3 is Geeta Devi. In her examination-in-chief filed on affidavit, DW-3 has stated that the respondent still wants to lead her conjugal life with the petitioner but the petitioner has left her and thereby tortured her physically and mentally and the respondent is still waiting for the petitioner to come and join her in her matrimonial home. DW-3 has stated that it is the petitioner who has tortured the respondent for demand of dowry. DW-3 has further stated that the petitioner is involved in murder of the "Bhabhi" of the respondent and further the petitioner has sexually exploited other women on the pretext of marry her.

In her cross-examination, DW-3 has stated that she has deposed from the side of the respondent in Guardianship Case No.02 of 2009 as well. DW-3 has further stated that the respondent Anita Singh is known to her since 2007 and DW-3 could not say about the relation between the petitioner and respondent prior to 2007.

66. DW-4 is Jamuna Das. In her examination-in-chief filed on affidavit, DW-4 has stated the same facts as stated by the DW-3. At para-2, this witness has stated that the respondent-Anita Devi wants to live with the petitioner. At para-9, this witness has stated that the petitioner has assaulted the respondent in the Court premises for which a criminal case being G.R. No.1256/2003 was instituted in which the petitioner has been

convicted for a period of three months by the Court of learned ADG-2. At para-10 DW4 has stated that the petitioner has confined the respondent in a room and assaulted her for which the respondent gave complaint to the local police.

At para-15 of her cross-examination, DW4 has stated that she is an illiterate lady and what was written in her evidence on oath was not read out to her. At para-19 this witness has stated that she did not go to the house of the respondent. In para-21 of her cross-examination, DW 4 has stated that she does not know as to when the marriage of the respondent was solemnized and she also does not know as when her son was born.

67. Thus, from scrutiny of the evidence adduced on behalf of the petitioner, it is evident that earlier the appellant-husband had filed a suit for divorce against the respondent but the said suit was dismissed as withdrawn at the instance of the appellant-husband. Thereafter, several criminal cases were filed by them against each other.

68. The appellant-husband has pleaded before the learned Family Court that the respondent-wife has criminal antecedent as she had been convicted in a criminal case being Sessions Trial No.23/2008 for allegedly committing murder of her sister-in-law (Bhabhi) whereas the learned Counsel for respondent-wife in the instant appeal has submitted that she was later acquitted in the said criminal case vide order/judgment dated 27.01.2018 passed by a Division Bench of this Court in Criminal Appeal (DB) No.702 of 2009.

69. The appellant-husband has further alleged that the respondent-wife had started torturing upon the children born out of the wedlock of his first wife but on scrutinizing the evidence it has come on record that the

children of the first wife of the appellant-husband were residing at their maternal grandfather's place at Begusarai and not at Jamshedpur. In addition to that, the appellant-husband did not produce his children from the first wife as witness to corroborate the factum of torture.

70. Thus, from the testimony of the appellant husband it is evident that he has filed the suit for dissolution of marriage on the ground of cruelty and desertion, therefore it would be apt to discuss herein the element of cruelty and desertion.

71. It needs to refer herein the definition of '*cruelty*' as has been defined by Hon'ble Apex Court in the judgment rendered in ***Dr. N.G. Dastane Vs. Mrs. S. Dastane [(1975) 2 SCC 326]***, wherein it has been held that the Court is to enquire as to whether the charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

72. The cruelty has also been defined in the case of ***Shobha Rani Vs. Madhukar Reddi [(1988) 1 SCC 105]***, wherein the wife alleged that the husband and his parents demanded dowry. The Hon'ble Apex Court emphasized that "cruelty" can have no fixed definition.

73. According to the Hon'ble Apex Court, "cruelty" is the "conduct in relation to or in respect of matrimonial conduct in respect of matrimonial duties and obligations". It is the conduct which adversely affects the spouse. Such cruelty can be either "mental" or "physical", intentional or unintentional. For example, unintentionally waking your spouse up in the middle of the night may be mental cruelty; intention is not an essential element of cruelty but it may be present. Physical cruelty is less ambiguous and more "a question of fact and degree."

74. The Hon’ble Apex Court has further observed therein that while dealing with such complaints of cruelty that it is important for the Court to not search for a standard in life, since cruelty in one case may not be cruelty in another case. What must be considered include the kind of life the parties are used to, “their economic and social conditions”, and the “culture and human values to which they attach importance.”

75. The nature of allegations need not only be illegal conduct such as asking for dowry. Making allegations against the spouse in the written statement filed before the court in judicial proceedings may also be held to constitute cruelty.

76. In *V. Bhagat vs. D. Bhagat (Mrs.)*, (1994)1 SCC 337, the wife alleged in her written statement that her husband was suffering from “mental problems and paranoid disorder”. The wife’s lawyer also levelled allegations of “lunacy” and “insanity” against the husband and his family while he was conducting cross-examination. The Hon’ble Apex Court held these allegations against the husband to constitute “cruelty”.

77. In *Vijay Kumar Ramchandra Bhate v. Neela Vijay Kumar Bhate*, (2003)6 SCC 334 the Hon’ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was “unchaste” and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute “cruelty” itself.

78. The Hon’ble Apex Court in *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 SCC 742, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is

whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be “grave” and “weighty” and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

79. “Cruelty” has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, reference be made to the judgment rendered by the Hon’ble Apex Court in the case *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288.

80. The Hon’ble Apex Court in the case of *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226 has observed that cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse and cruelty may be physical or mental. It has further been observed that staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof.

81. In matrimonial relationship cruelty means absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty

reference be made to the case of *Ravi Kumar v. Julmidevi*, (2010) 4 SCC 476.

82. For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship reference may be taken from the judgment rendered by the Hon'ble Apex Court in the case of *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (*supra*).

83. Further, the word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of *Vinita Saxena v. Pankaj Pandit*, (2006) 3 SCC 778.

84. Further, in the case of *Manish Tyagi v. Deepak Kumar*, (2010) 4 SCC 339 the Hon'ble Apex Court has categorically observed that to constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that another spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with another spouse. Hence, it is not necessary to establish physical violence.

Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty.

85. Thus, the word “cruelty” under Section 13(1) (i-a) of the Act has got no static connotation, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and has to be applied from person to person while taking note of the attending circumstances. Harm or injury to health, reputation, the working-career or the like, would-be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. It has to be shown that the defending spouse has treated him with cruelty to cause reasonable apprehension in his/her mind that it will be harmful or injurious to live with the contesting spouse.

86. At this juncture, it would be apt to refer the definition of desertion as defined under explanation part of Section 13 which means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage.

87. Further, it requires to refer herein that the word ‘desertion’ has been given in Explanation to Section 13 (1) wherein it has been stated that “the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

88. It is pertinent to note that the word ‘desertion’, as has been defined in Explanation part of Section 13 of the Act, 1955, means the

desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

89. ***Rayden on Divorce*** which is a standard work on the subject at p. 128 (6th Edn.) has summarised the case-law on the subject in these terms:

“Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party.”

90. The legal position has been admirably summarised in paras-453 and 454 at pp. 241 to 243 of *Halsbury's Laws of England* (3rd Edn.), Vol. 12, in the following words:

“In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.

91. Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, ‘the home’. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated. The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an

allowance to a wife whom he has abandoned is no answer to a charge of desertion.

92. The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least two years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. desertion is a continuing offence.

93. It is, thus, evident from the aforesaid reference of meaning of desertion that the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end.

94. Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. In such a situation, the party who is filing for divorce will have the burden of proving those elements.

95. The Hon'ble Apex Court in *Debananda Tamuli vs. Kakumoni Katakya*, (2022) 5 SCC 459 has considered the definition of 'desertion' on

the basis of the judgment rendered by the Hon'ble Apex Court in ***Lachman Utamchand Kirpalani v. Meena, AIR 1964 SC 40*** .

96. It has been observed by the Hon'ble Apex Court that 'desertion' means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by the Hon'ble Apex Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

"13. Divorce.—(1) ...

Explanation.—In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."

97. Now advertng to the factual aspect, it is evident from the impugned order that the allegations specific to the ground of alleged cruelty and desertion has been made by petitioner/plaintiff-husband.

98. In the instant case as per pleadings of both the parties the marriage between them as per Hindu rites is admitted fact. Further the birth of a child out of the said wedlock is also admitted fact.

99. Further, the petition has been filed by the petitioner/appellant before learned Family Court for a decree of divorce on the ground of cruelty and desertion wherein he made allegation against the respondent/wife that he has been subjected to cruelty at the hands of the respondent. In Para-8 of his examination-in-chief, appellant-husband has stated that after birth of a male child from the respondent, her parents and her brother demanded money from him. In para-9, he has stated that a friend of her father-in-law, namely, Ramakant Singh had produced letters of his father-in-law, namely, Jagarnath Prasad Singh, mother-in-law, namely, Pushpa Lata Devi and brother-in-law, namely, Manoranjan Singh on different occasions and got Rs.50,000/- from him. At para-10 he has stated that her mother-in-law used to obtain money by pledging gold items, and would then ask for money to redeem the pledged items. At para-11 he has stated that the respondent and her parents started demanding money of Rs. 1 lakh from him to open a STD booth in the name of his brother-in-law Manorajan Singh and when he refused to give money, they started torturing him and even brutally assaulted him when he went for his duty. At para-12, the appellant has specifically stated that after assaulting him all threw him out of the quarter at Baridih, and threatened that he should return only when demand of one lakh rupees would be fulfilled. At para-13 the appellant-husband has stated that due to torture of the respondent he had filed a suit for divorce being Matrimonial Suit No.49 of 2001 and after getting notice of that suit the respondent-wife had filed a criminal case of dowry and domestic violence being Case No.1346/2001. At para-14, the appellant-husband has stated that on compromise the said matrimonial suit was dismissed as withdrawn but later on the respondent-

wife had filed a case for maintenance being Misc. Case No.37 of 2002 against him.

100. The allegation levelled by the appellant-husband in the plaint is that the respondent and her family members always demanded money from him and on refusal they assaulted and tortured him. It is also alleged that in-laws of the appellant-husband demanded Rs. One lakh for opening a STD booth for his brother-in-law and on refusal by him the dispute cropped up in between both the parties and thereafter bitterness of matrimonial relationship of husband and wife started deteriorating severely by the litigating attitude. The respondent used to lodge one after another criminal cases on false grounds only to humiliate her husband and she lodged a false case under the provision of Dowry Prohibition Act and other sections of I.P.C. and, thus, humiliated him. They brutally assaulted the appellant-husband and compelled him to leave the staff quarter no.642 at Baridih and living separately in a rented quarter at Vidyapati Nagar. But even after they always approached the appellant-husband at his rented quarter for demand of money and on refusal, also assaulted him due to which a criminal case was lodged by the appellant-husband against them.

101. The respondent Anita Devi in para-37 of her cross examination has stated that when her husband (the appellant) has deserted her and even stopped to give any penny for her maintenance then her parents came and started residing with her. At para-41, the respondent has admitted that she had not taken permission from her husband (the appellant) to get solemnized her brother's marriage at that quarter nor had invited him because she simply did not know where he was living. At para-44 the respondent had admitted that her father demanded Rs.30000/- from her

husband (the petitioner) as her father had purchased the wood for constructing a house by the petitioner at Begusarai. At para-52 of her cross-examination, the respondent has stated that her husband had conspired to implicate her and her parents in a criminal case which was instituted due to death of her sister-in-law, namely, Sonam Dutta.

102. Herein, as per the facts of the case it has come in the evidence of the appellant-husband that he was brutally assaulted by the respondent-wife and her family members at Jamshedpur due to non-fulfillment of demand of money and he was compelled to leave the staff quarter no.642 in which he was residing. The appellant-husband has further pleaded that for mental peace he was compelled to live in a rented quarter at Vidyapati Nagar.

103. It has also come in the evidence of both the parties that several criminal cases were filed against each other by both the parties. On one hand, the appellant-husband has stated that he was brutally assaulted by the respondent-wife and her family members as he could not fulfil the demand of money to them whereas the respondent-wife has stated that the respondent had left the staff quarter and started living in a rented house at Vidyapati Nagar as he wanted to get rid of her and thus, he has deserted her. Even though, the respondent-wife is still willing to live with the appellant-husband.

104. The defendant has categorically stated that she does not desire divorce and she is still willing to live with her husband (the appellant). She has denied ever treating the plaintiff with cruelty, asserting that she has consistently endeavoured to continue her marital life. She has alleged that the plaintiff has deserted her and even stopped to give any penny for

maintenance of her child and herself and she was compelled to lodge criminal cases against him solely due to his conduct. She has denied instituting false criminal cases, asserting that such cases were necessitated by the petitioner's behaviour.

105. The learned Family Court has considered the entire factual aspect as well as settled position of law and after going through the evidence on record has explained in detail about absence of element of cruelty and desertion. For ready reference, the relevant paragraph thereof is being quoted as under:

“16. ISSUE No. III & IV: The incidences of cruelty as pleaded by the petitioner husband in the plaint can be divided broadly in two parts. The first part is related with the incidences which occurred prior to filing of Matrimonial Suit No.49 of 2001 and the second part are related with the incidences which occurred after the withdrawal of Matrimonial Suit No.49 of 2001. As per the petitioner, the second part of incidences gave fresh cause of action for this suit. The first pleadings related with the cruelty appears in Paras-8 to 10 of the plaint, wherein the petitioner has pleaded that when after the marriage, the petitioner and respondent started residing at workers flat, Baridih, Jamshedpur along with two minor children born out of wedlock of the first wife, the respondent mercilessly tortured her steps children causing immense mental agony to the petitioner and when the torture upon the two children went beyond limit, the petitioner was compelled to send the children to their maternal grandfather's house at Pokhariya, Begusarai. In reply to this allegation, the respondent wife has stated that the fact of first marriage and children from first marriage of the petitioner was not known to the respondent and after the marriage, the respondent came to Jamshedpur along with the petitioner and firstly they resided in the rented house at Namda Basti but after three months, they shifted to the allotted quarter of the petitioner bearing quarter No.642 Baridih Jamshedpur. The respondent wife has stated that the children of first wife of the petitioner never stayed with her in the said quarter. In his examination-in-chief, the petitioner himself, PW-1 has not stated that after the marriage with respondent, the children of his first wife started to live with them at quarter No.642 rather in Para-3, PW-1

has stated that after sudden accidental death of his first wife, his children from the first wife were kept and nurtured by his father-in-law Chandra Bhusan Prasad, on the expense of the petitioner. Thus, in his examination-in-chief, the petitioner, the PW-1 has not stated that the respondent tortured the children of his first wife at Jamshedpur. Further in para-6 of his further cross-examination done on 21.06.2017, PW-1 has stated that schooling of her children from the first wife was done from DAV School at Begusarai, both the children passed their matriculation examination from DAV School Begusarai and after that the boy did his college education from Delhi whereas the girl has done college education from Begusarai and both the children did their engineering courses from Bangalore. In fact, in his entire deposition PW-1 has nowhere his children from his wife ever resided at Jamshedpur along with the respondent. Further it is also pertinent to mention here that PW-1 in para-47 of his further cross-examination has stated that the dates of birth of his children from first wife are 29.06.1991 and 07.03.1993 respectively. In other words, at the time of filing of this case the elder child was aged about 17 years and the younger was aged about 15 years and during pendency of this case both of them have become major but the petitioner has not examined any of two children to support this pleading that they were tortured by the respondent. Further, the petitioner has not even examined his said father-in-law, Chandra Bhusan Prasad, the maternal grandfather of the children to whom the children were sent after the alleged torture. Thus, the pleadings of the petitioner that his children from the first wife were tortured mercilessly by the respondent has not been supported with any evidence.

17. The second allegation which have been leveled in paragraphs-11 to 14 of the plaint, wherein the petitioner has alleged that after the children of his first wife were sent to their maternal grandfather's house, the parents and the brother of the respondent came in the aforesaid flat started residing there, causing annoyance to the petitioner and they started extorting money from the petitioner. Further the respondent pressurized the petitioner to transfer the land purchased by the petitioner at Begusarai in his own name and in the name of his elder son. In support of these pleadings, PW-1, the petitioner, in paras-8 to 11 of his examination-in-chief has stated that the petitioner was blessed with a son on 05.12.1999, out of his wedlock with the respondent and after that the mother of the respondent namely Pusplata Devi, the father of the respondent namely Jagarnath

Prasad and the brother of the respondent Manoranjan Singh started demanding money from the petitioner by personally coming to Jamshedpur and by writing letters. PW-1 has further stated that one Ramakant Singh, who is friend of his father-in-law and who was working in electricity department, Jamshedpur, used to give him the demand letters of the mother, father and brother of the respondent and thereby his in-laws had taken about Rs.50,000/- from the respondent and they further demanded Rs.1,00,000/- for opening STD booth for the brother of the respondent and when PW-1 refused he was assaulted by them and he was not provided proper food and finally PW-1 was driven out of the said quarter. PW-1 has filed the photocopy of certified copy of the said letter which was exhibited in Miscellaneous Case No. 37 of 2002 dated 31.10.1999 and in the said letter, the father of the respondent has made demand of Rs.30,000/-. The father of the respondent, Jagarnath Prasad Singh, DW-2, in Para-41 of his cross-examination has admitted this letter to be written by him but in para-40 of his cross-examination, has explained that he has demanded the said money for purchasing wood for the father of the petitioner. DW-1, the respondent in para-44 of her cross-examination has also admitted that her father has demanded Rs.30,000/- from her husband by writing letter on 31.10.1999 but DW-1 has also stated that this money was demanded as his father has purchased wood for the house of her husband which was constructed at Begusarai. Apart from the aforesaid letter dated 31.10.1999, the petitioner has not brought any other letter making any demand of money by the respondent or her father or her mother or her brother. The solitary evidence of demanding money by the father of the respondent from the petitioner is this letter dated 31.10.1999 and the respondent herself as well as her father has explained that this demand was made in lieu of the wood purchased by the father of the respondent for the house of the petitioner which was constructed at Begusarai. The petitioner has not examined the said Ramakant Singh in this case who was allegedly the middle man who communicated this demand to the petitioner. Further there is no evidence on the record that the petitioner ever made any payment to the father of the respondent. The respondent on the other hand has contended that in March 2001, when the petitioner left the respondent and her minor child, the mother of the respondent came to Jamshedpur to look after the respondent and her child as the respondent and her child were left alone in the said quarter. It is further pertinent to mention here that prior to filing of earlier divorce suit vide Matrimonial Suit No. 49 of 2001, the petitioner has not filed

any complaint or any information to any authority he regarding the alleged assault of the petitioner by the respondent or brother and parents. In fact, it is admitted case of the petitioner that the petitioner himself has withdrawn the Matrimonial suit No.49 of 2001 on the ground the petitioner has not collected sufficient evidence for the said suit. Thus, in view of these facts, this court finds that the first part of the pleadings of the petitioner related with the alleged atrocities and cruelty committed to the children of the petitioner from the first wife and on the petitioner himself has not been proved by the petitioner.

18. The second part of the allegation is related with the incidences after withdrawal of Matrimonial suit No. 49 of 2001. The petitioner has pleaded in paras-29 to 26 of the plaint that the respondent wife has filed several halve cases against the petitioner and further the respondent wife and her parents and her brother has assaulted the petitioner and his father on many occasions. From perusal of the pleadings, it transpires that after withdrawal of the said matrimonial suit, the respondent wife filed miscellaneous case No.37 of 20112 claiming maintenance for herself and her minor son. She further filed petition u/s 307 of CrPC vide Misc. case No.74 of 2002 and she further lodged a criminal case at Begusarai vide GR Case No.1234 of 2003. It is pertinent to mention here that prior to withdrawal of Matrimonial Suit No. 49 of 2001, the respondent wife has filed complain case No.636 of 2001 on 16.06.2001 which was subsequently registered as Sitdhgora PS Case No.94 of 2001 against the petitioner alleging offence u/s 498A of IPC and u/s 3/4 of Dowry Prohibition Act. On the other hand, the petitioner has also filed several cases against the respondent. From perusal of the plaint, it is evident that the petitioner filled a case u/s 207 of CrPC against the respondent vide miscellaneous case No.3420 of 2002. Further another criminal case vide 0/1 (Case No.564 of 2003 was instituted against the respondent and others for allegedly assaulting the petitioner and his father in court campus Again, the father of the petitioner instituted C/I case No.1430 of 2002 on 21.30.2002 against the respondent at Begusarai court and mother case being C/I Case No.897 of 2002 was instituted against the respondent by the petitioner for allegedly snatching the gold ornaments of the petitioner. Another case being C/I case No.1374 of 2007 was filed by the petitioner against the respondent at Jamshedpur. Thus, it is evident from the perusal of the pleadings as well as documents filed on behalf of the parties that it is not only the respondent wife who has instituted a criminal case against the petitioner husband rather the petitioner husband has also instituted

several criminal cases against the respondent wife and parents, in fact, the petitioner in para-39 of his cross-examination has stated that he has filed five cases against the respondent. Para-43 of cross-examination of PW-1 suggest that the petitioner has provided financial help to one Sarju Kumar who has filed Miscellaneous case No.66 of 2003 against the respondent. It is further evident that after withdrawal of the earlier Matrimonial Suit on 14.12.2001, within two years that is till 2003, the parties have filed several criminal cases against each other not only at Jamshedpur but at Begusarai as well. The evidences available on record and the documents filed on behalf of the parties, shows that the petitioner husband has instituted more cases than the respondent wife and all these cases were instituted against each other within two years that is till 2003 and thereafter one case was filed in 2007 vide C/I Case No.1374 of 2007 by the petitioner husband against the respondent wife. These facts clearly shows that even though the respondent wife has filed criminal cases against the petitioner husband but the petitioner husband was not lagging behind and in fact he has filed more cases against the respondent wife. It is needless to say that in some of these cases, the parties have been acquitted but in some case cases, they have been convicted. In the backdrop of the reason for withdrawing the earlier matrimonial suit that is Mat. Suit No.49 of 2001, wherein the suit was withdrawn by the petitioner husband for lack of evidence, it appear to this court that the subsequent cases have been instituted with the purpose of collecting evidences and therefore this court is of the view that the respondent wife can not be accused for filing frivolous criminal cases and thereby causing cruelty upon the petitioner husband because the petitioner husband has filed more cases during this period.

19. During course of argument, learned counsel for the petitioner has submitted that the respondent wife has been charge with committing dowry death of her "Bhabhi" and in fact she has convicted u/s 304B of IPC in ST Case No.23 of 2008 and she has been sentenced to life imprisonment. Learned counsel for the petitioner has submitted that considering the criminal mentality of the respondent wife, it is not safe for the petitioner to lead his conjugal life with the respondent. No doubt, the respondent wife has been convicted for the offence u/s 304B of IPC for the charge of abetting suicide of her "Bhabhi" and she had been sentenced to undergo life imprisonment and presently she is on bail as she has preferred criminal appeal before the Hon'ble High Court but this court is of the view that on this ground alone, the petitioner husband is not entitled for a decree of divorce because the

conviction of wife for charges of murder is no ground for divorce and further more in the fact and circumstances of this case, where evidently the petitioner husband was not residing with the respondent wife since the years 2001, it can not be held that the petitioner husband has the apprehension of danger of life living with the respondent wife. In fact, since the years 2001 the petitioner is not residing with the respondent wife and therefore on this score no decree of divorce can be passed by this court.

20. So far the ground of desertion is concerned, it is own pleadings of the petitioner that when the alleged atrocities and cruelty of the respondent wife crossed the limit, the petitioner husband was compelled to leave quarter No.642 Baridih, Jamshedpur and he started residing at rented house at Vidyapati Nagar for mental peace. In other words, it is not the wife who has deserted the petitioner husband rather it is the petitioner husband who has deserted the respondent wife. It is admitted case of the parties that the respondent wife is still living in the same quarter where she was brought by the petitioner after her marriage and the respondent wife in her evidence has specifically stated that she is still willing to lead her conjugal life with the petitioner. The petitioner has nowhere mentioned the date of alleged desertion. From the pleadings and evidences adduced on behalf of the parties, even though the factum of desertion has been proved as it is admitted that the parties are living apart since 2001 but the evidence shows that the desertion is from the part of the petitioner husband and not from the respondent wife rather the respondent wife is still willing to live with the petitioner and accordingly this court finds that on the ground of desertion also the petitioner husband is not entitled for divorce.”

106. Thus, from the aforesaid it is evident that the learned Family Judge has considered the fact that the appellant-husband has miserably failed to establish the allegation of cruelty and desertion against the respondent-wife, rather it has come on record that it was the appellant-husband who had deserted the respondent and started living in a rented house separately. It has also come on evidence that when the respondent-wife had been sent to judicial custody in the criminal case being Sessions

Trial No.23/2008, he filed a divorce suit in a very calculated manner with conspiracy.

107. After discussing in detail on the point of cruelty and desertion, in view of the judgment of the Hon'ble Apex Court, the learned Family Judge at para-23, 24 and 25 has held as under:

“23. ISSUE No. VI :- It has been submitted on behalf of the petitioner that in this case it is the admitted fact that the parties are living apart since 2001 and there are numbers of litigations between the parties involving several criminal cases and the circumstances of this case clearly shows that the marriage of the parties has irretrievable broken down and on this score alone the decree of divorce may kindly be passed. This court is of the view that the ground of irretrievable brake down of marriage is not available for this court to grant any decree of divorce. Further more although during course of argument the learned counsel for the petitioner has raised this ground of irretrievable brake down of marriage but this ground has not been pleaded in the plaint even during evidence the petitioner has not taken this ground. it is settled law that court can not make out a new case which is not pleaded.

24. It is pertinent to mention here that the first divorce suit was filed by the petitioner husband in the years 2001 and it was withdrawn on 14.12.2001 and thereafter for about seven years, no case of divorce was filed and only when the respondent wife was in jail custody in connection with another Sessions case related with dowry death of her Bhabhi, the petitioner has filed a divorce suit on 03.06.2008 that is almost about six and half years, though the bulk of criminal cases between the parties were filed during the years 2002-03 as discussed above. Section 23 (i)(d) of the Hindu Marriage Act Provides :- Decree in proceedings.-

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and.....

In the instant case after withdrawal of the first divorce suit the second divorce suit has been filed almost after seven years and on the same ground of cruelty. There is no explanation on behalf of the petitioner as to why this present suit has been after seven years of withdrawal of

the earlier suit and that too when the petitioner has specifically denied leave to file fresh suit. This court is of the view that on the ground of delay also the petitioner is not entitled for any relief. Accordingly, issue No. VI is decided against the petitioner.

25. *It is pertinent to mention that in the heading of her written statement the respondent wife has mentioned about the counter claim u/s 9 of the Hindu Marriage Act but no corresponding pleadings has been made in the body of the written statement and even in the prayer portion of the written statement, no decree of restitution of conjugal right has been prayed by the respondent wife rather the respondent wife has prayed for dismissal of the divorce suit and return to her streedhan. But regarding streedhan also there is no pleading in the written statement and even in the evidence of the respondent and her witnesses, this counter claim has not figured and prayed. Under these circumstances no relief of counter claim can be granted to the respondent wife.*

26. *In view of the findings of this court on all the issues framed in this suit it is hereby*

ORDERED

that this suit is dismissed on contest.

In the facts and circumstances of this case the parties shall bear their own cost."

108. Before entering into merit of the case, it needs to mention herein that the respondent has objected to the maintainability of the present suit before the learned Family Court on the ground that Matrimonial Suit No.49 of 2001, filed earlier by the petitioner for the same relief, was withdrawn without liberty to institute a fresh suit. It is contended that, in view of Order XXIII Rule 1(4) CPC, the present suit is barred.

109. The learned Family Court has appreciated the aforesaid issue by framing as issue No. V.

110. In the aforesaid context it needs to refer herein that Order XXIII Rule 1(4) CPC provides that where a plaintiff withdraws a suit without permission to file afresh, he is precluded from instituting another suit on the same cause of action. The provision is intended to prevent multiplicity

of proceedings and to ensure finality once a party elects to abandon a claim without reserving liberty. It is admitted that Matrimonial Suit No.49 of 2001 was withdrawn by the petitioner husband without liberty to file a fresh suit. The present suit seeks the same relief of dissolution of marriage.

111. However, the petitioner has attempted to distinguish the cause of action by pleading subsequent incidents of cruelty occurring after withdrawal of the earlier suit. The pleadings suggest that the petitioner relies upon fresh allegations post-2001 to sustain the present claim. Thus, while the relief sought is the same, the cause of action is sought to be differentiated. The crucial test is whether the present suit is founded on the same cause of action as the earlier suit. If the allegations are confined to those already pleaded in Matrimonial Suit No.49 of 2001, the bar under Order XXIII Rule 1(4) CPC would apply. If, however, fresh and distinct acts of cruelty are alleged to have occurred subsequent to withdrawal, they may constitute a new cause of action, thereby saving the suit from the bar.

112. Further, in this regard, it is profitable to refer to the provision contained in Order XXIII Rule 1(4) of CPC, which necessitates that if a plaintiff abandons a suit or withdraws from a claim without court permission, they are precluded from filing a fresh suit regarding the same subject matter or part of the claim. However, the Hon'ble Supreme Court in the case of *Vimlesh Kumari Kulshrestha Vs. Sambhaji Rao* reported in *(2008) 5 SCC 58* has held that "High Court was wrong in dismissing second suit on the ground that it was hit by Order 23 Rule 1(3)(b) merely because specific permission to file second suit was not obtained, therefore, Order 23 Rule 1(3)(b) did not apply to the facts and circumstances of the case.

113. On the basis of discussion made hereinabove, we are of the considered view that in the matrimonial cases, cruelty or desertion is often considered to be a continuing or recurring cause of action. If the second suit is filed on a fresh cause of action (new acts of cruelty or a fresh period of desertion) then the subsequent suit is maintainable. Therefore, the bar under Order XXIII Rule 1(4) of CPC is not applicable in such cases.

114. From the facts of this case, it is clear that the subsequent suit for granting decree of divorce filed by the appellant shall be considered to be maintainable as the action of cruelty is often considered to be a continuing cause of action. In the present set of facts and circumstances of the case, such cause of action shall also be considered to be a fresh cause of action. Hence, on the basis of maintainability of subsequent suit, this appeal preferred against the said suit is also maintainable.

115. Re-adverting to the factual aspect, it is evident that the appellant-husband has taken the ground of cruelty meted to him by his wife (the respondent). The petitioner has pleaded in Paras 8-10 of the plaint that the respondent mercilessly tortured the children born of his first wedlock while residing at Baridih, Jamshedpur.

116. However, this allegation is wholly unsupported by evidence. In his own examination-in-chief, PW-1 did not depose that the children ever resided with the respondent at Quarter No.642, Baridih. On the contrary, PW-1 admitted that after the accidental death of his first wife, the children were nurtured by their maternal grandfather, Chandra Bhusan Prasad, at Pokhariya, Begusarai, with their schooling completed at DAV School, Begusarai, and subsequent higher education pursued in Delhi, Begusarai, and Bangalore.

117. In cross-examination, PW-1 reiterated that the children were educated outside Jamshedpur and never resided with the respondent. The petitioner has not examined either of the children, who by the time of trial had attained majority, nor has he examined the maternal grandfather, who allegedly sheltered them after the supposed acts of cruelty. Thus, the allegation of torture upon the step-children remains unsubstantiated.

118. The pleadings of cruelty must be corroborated by cogent evidence. In matrimonial disputes, mere allegations without supporting testimony or corroboration cannot be accepted as proof. The petitioner's failure to produce the children or their grandfather as witnesses, despite their availability, creates a fatal lacuna in his case. The Court cannot presume cruelty in absence of direct or circumstantial evidence. Further, the respondent wife has consistently stated that she was unaware of the petitioner's first marriage and that the children never resided with her at Jamshedpur. This defence is corroborated by the petitioner's own deposition. Hence, the respondent's version appears credible and consistent with the record.

119. The petitioner has alleged that after his children from the first marriage were sent to their maternal grandfather's house, the parents and brother of the respondent began residing in his allotted flat at Baridih, Jamshedpur, causing annoyance and extorting money. He further alleged that the respondent pressured him to transfer land purchased at Begusarai in his own name and in the name of his elder son. In support, PW-1 deposed that after the birth of a son on 05.12.1999, the respondent's parents and brother demanded money both in person and through letters, and that about ₹50,000 was taken, with a further demand of ₹1,00,000 for

opening an STD booth. He also alleged assault and deprivation of food, culminating in his being driven out of the quarter.

120. The solitary documentary evidence produced is a letter dated 31.10.1999, exhibited in Miscellaneous Case No.37 of 2002, wherein the respondent's father demanded ₹30,000. DW-2, the father of the respondent, admitted authorship of the letter but explained in cross-examination that the demand was for purchasing wood for the petitioner's house at Begusarai. DW-1, the respondent, corroborated this explanation, stating that the money was sought in connection with construction of the petitioner's house. No other letters of demand have been produced.

121. The petitioner has not examined Ramakant Singh, the alleged intermediary who delivered the letters, nor has he adduced evidence of any actual payment made to the respondent's father. The solitary letter stands explained by both DW-1 and DW-2 as relating to construction expenses, and no corroborative material has been brought to establish extortion or coercion.

122. The respondent has contended that in March 2001, when the petitioner left her and the minor child, her mother came to Jamshedpur to care for them. This explanation appears consistent with the circumstances. Moreover, prior to filing Matrimonial Suit No.49 of 2001, the petitioner lodged no complaint with any authority regarding alleged assault or extortion.

123. In view of the foregoing, this Court finds from perusal of the impugned judgment that the allegations of extortion and coercion by the respondent's parents and brother, as pleaded in paras 11-14 of the plaint, are not proved. The solitary letter dated 31.10.1999 has been satisfactorily

explained, and no corroborative evidence has been adduced. The petitioner's case suffers from material deficiencies, including failure to examine key witnesses and absence of proof of payment.

124. It is evident from the pleadings and documents that both parties have resorted to criminal litigation against each other. The respondent wife instituted proceedings under Section 498A IPC and allied provisions, while the petitioner husband himself admitted in para-39 of his cross-examination that he filed five cases against the respondent. Para-43 of his cross-examination further reveals that he provided financial assistance to one Sarju Kumar, who instituted Miscellaneous Case No.66 of 2003 against the respondent.

125. The record demonstrates that within two years of withdrawal of Matrimonial Suit No.49 of 2001 (withdrawn on 14.12.2001 for lack of evidence), both parties filed several criminal cases against each other, not only at Jamshedpur but also at Begusarai. The petitioner husband, in fact, instituted more cases than the respondent wife. Thereafter, in 2007, he filed C/1 Case No.1374 of 2007 against the respondent.

126. It is not disputed that in some of these cases, the parties have been acquitted, while in others, convictions have been recorded. The multiplicity of proceedings reflects mutual hostility rather than unilateral harassment. In the backdrop of the petitioner's withdrawal of Matrimonial Suit No.49 of 2001 on the ground of insufficient evidence, it appears that subsequent criminal cases were instituted with the object of collecting evidence for matrimonial litigation. This Court is, therefore, of the view that the respondent wife cannot be accused of filing frivolous criminal cases amounting to cruelty, since the petitioner himself was equally, if not more, litigious during the relevant period.

127. During the course of argument, learned counsel for the petitioner has urged that the respondent wife, having been convicted under Section 304B IPC in Sessions Trial Case No.23 of 2008 for abetting the dowry death of her “Bhabhi” and sentenced to life imprisonment, demonstrates a criminal mentality. It is contended that, in view of such conviction, it is unsafe for the petitioner to continue his conjugal life with the respondent.

128. No doubt, the respondent wife stands convicted under Section 304B IPC by the Sessions Court and has been sentenced to undergo life imprisonment. It is also undisputed that she has been acquitted in the aforesaid case by the High Court in the Cr. Appeal (DB) No. 702 of 2009. However, matrimonial law does not recognize conviction for a criminal offence, even of grave nature, as an independent ground for divorce. The statutory grounds for dissolution of marriage are exhaustively enumerated under the Hindu Marriage Act, 1955, and conviction under Section 304B IPC does not fall within the ambit of Section 13 thereof.

129. The petitioner’s reliance upon the respondent’s conviction is misplaced. The pendency of appeal before the High Court renders the conviction non-final. More importantly, even assuming the conviction stands, it does not ipso facto constitute cruelty or any other recognized matrimonial ground. The petitioner cannot, therefore, seek dissolution of marriage solely on the basis of the respondent’s criminal conviction. This Court is of the considered view that the conviction of the respondent-wife under Section 304B IPC, though serious, does not furnish a valid ground for divorce under the governing statute.

130. The desertion while, on the other hand, has been defined that if either of the parties on its own has left the house without any compulsion

or coercion, then only such type of separation will come under the fold of desertion.

131. The petitioner has pleaded that owing to the alleged atrocities and cruelty of the respondent wife, he was compelled to leave Quarter No.642, Baridih, Jamshedpur, and to reside in a rented house at Vidyapati Nagar for mental peace. Thus, the petitioner himself admits that it was he who left the matrimonial home.

132. It is the admitted case of the parties that the respondent wife continues to reside in the same quarter where she was brought after marriage. In her evidence, she has specifically stated that she is still willing to lead her conjugal life with the petitioner. This assertion remains unshaken in cross-examination.

133. The petitioner has nowhere mentioned the date of alleged desertion. While the factum of separation since 2001 is admitted, the essential element of animus deserendi on the part of the respondent-wife is absent. On the contrary, the evidence demonstrates that the respondent-wife has consistently expressed willingness to resume cohabitation.

134. Desertion under Section 13(1)(ib) of the Hindu Marriage Act requires proof that the respondent spouse abandoned the petitioner without reasonable cause, without consent, and with the intention of permanently ending cohabitation. In the present case, the evidence shows that it is the petitioner-husband who deserted the respondent-wife, not vice versa. The respondent's willingness to continue conjugal life negates the plea of desertion.

135. Accordingly, this Court finds that the petitioner-husband is not entitled to a decree of divorce on the ground of desertion. The separation

is attributable to the petitioner's own conduct, and the statutory requirements of desertion are not satisfied.

136. Thus, from the aforesaid, it is evident that factum of desertion has not been proved cogently by the appellant/husband, rather it has come on record that appellant/husband on his own had left the staff quarter no.642 and residing separately in a rented quarter and thus, deserted the respondent-wife.

137. This Court, upon a comprehensive discussion of the factual matrix and the governing legal principles, and having adverted to the consideration undertaken by the learned Family Judge in the impugned judgment relevant portions of which have already been referred to and quoted hereinabove, finds that the issues of cruelty and desertion have been duly and adequately examined by the learned Family Judge. The analysis therein reflects conscious appreciation of the evidence, both oral and documentary, and the conclusions reached cannot be said to suffer from perversity or error.

138. Upon due consideration of the oral and documentary evidence adduced by both sides, the learned Family Judge has rightly concluded that the appellant-husband has miserably failed to establish the statutory grounds of cruelty and desertion against the respondent-wife. The pleadings stood uncorroborated, the testimony of PW-1 was inconsistent, and the essential elements of cruelty and animus deserendi were wholly absent.

139. The aforesaid reason has led the learned Family Judge to dismiss the suit.

140. This Court, on consideration of the finding arrived at by the learned Family Judge and based upon the aforesaid discussion, is of the view that the judgment and decree passed by the learned Family Judge on the point of desertion and cruelty is not coming under the fold of the perversity, since, the conscious consideration has been made of the evidences, both ocular and documentary, as would be evident from the impugned judgment.

141. This Court, therefore, is of the view that the judgment dated 20.07.2017 and the decree signed on 31.07.2017 passed in Original Suit No.145 of 2008 by the learned Additional Principal Judge, Additional Family Court, East Singhbhum at Jamshedpur need no interference and, accordingly, the instant appeal stands dismissed.

142. Pending Interlocutory Application, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Sudhir
Dated: 27/08/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 28/08/2026.